

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

74-1153

To be argued by
ELLIOT G. SAGOR

United States Court of Appeals FOR THE SECOND CIRCUIT

Docket No. 74-1153

UNITED STATES OF AMERICA,

Appellee,

—v.—

ARNOLD SQUITIERI,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

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BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

Arnold Squitieri appeals from a judgment of conviction entered on January 11, 1974 in the United States District Court for the Southern District of New York after his plea of guilty before the Honorable Milton Pollack, United States District Judge.

Indictment 73 Cr. 316, filed on April 12, 1973, charged Arnold Squitieri and his wife, Marie Squitieri, in eight counts with conspiracy to evade income taxes, failure to file tax returns, and income tax evasion for the years 1967 through 1970, in violation of Title 18, United States Code, Section 371 and Title 26, United States Code, Sections 7203 and 7201.

Statement of Facts

On October 30, 1973 Squitieri pled guilty to two counts of failure to file (Counts Two and Three) and one count of income tax evasion (Count 8).*

On January 11, 1974, Judge Pollack sentenced Squitieri to nine months imprisonment and a fine of \$2,500 on Counts Two and Three and four years imprisonment and a fine of \$5,000 on Count Eight, the prison sentences to run concurrently and the fine to be cumulative, for a total of \$10,000. Squitieri was remanded and is presently serving his sentence.**

ARGUMENT

The sentence imposed by Judge Pollack is not subject to review and was in any event well within his discretion.

Squitieri's sole claim is that the sentence of four years and a ten thousand dollar fine was "incredibly harsh" and "should be reduced to two years and the fine of \$10,000 set aside in its entirety".***

The contention is wholly without merit. In the absence of extraordinary factors not even *claimed* to be present here, a sentence within statutory limits is not subject to appellate review. *E.g., United States v. Velazquez*, 482 F.2d 139, 142 (2d Cir. 1973); *United States v. Brown*, 479 F.2d 1170, 1172 (2d Cir. 1973). The maximum penalty for violation of Section 7203 of Title 26 (Counts Two and Three) is im-

* At the time of the plea the Court was advised that the Government would file a nolle prosequi as to Marie Squitieri.

** At the time of sentence defendant had New York State charges against him (Appellant's Appendix [hereafter "A"] 22).

*** How appellant's counsel arrives at this determination of what the sentence should be is not explained.

prisonment for one year and a ten thousand dollar fine; the maximum penalty for violation of Section 7201 (Count Eight) is five years imprisonment and a ten thousand dollar fine. In this case the term of imprisonment imposed by Judge Pollack was barely more than half the potential maximum and the fine one-third of the potential maximum on the three counts to which Squitieri pleaded guilty.

While further discussion is wholly unnecessary, it may simply be noted that in addition to the crimes to which Squitieri pleaded guilty before Judge Pollack, he had four prior convictions, two of them for state and federal felony narcotics violations (A-21). Unemployed since 1963, Squitieri claimed to have earned his money from gambling, an assertion the Probation Officer said was "unverifiable and questionable" (A-19). But whatever the source of his income, his plea of guilty to Count Eight was an admission that in 1970 his unreported taxable income was substantial.* The short of it is that the punishment imposed by Judge Pollack was more than reasonable under the circumstances.**

* How a \$10,000 fine can be said to be excessive here is incomprehensible.

** No motion to reduce sentence under Rule 35 of the Federal Rules of Criminal Procedure has ever been made.

CONCLUSION

The judgment of conviction should be affirmed.

Respectfully submitted,

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AFFIDAVIT OF MAILING

State of New York
County of New York

Elmer J. Sayer being duly sworn,
deposes and says that he is employed in the office of
the United States Attorney for the Southern District of
New York.

That on the 27th day of March, 1974
he served a copy of the within Brief
by placing the same in a properly postpaid franked
envelope addressed:

GINO GALLINA Esq.
30 Broad St.
NY NY 10004

And deponent further says that he sealed the said en-
velope and placed the same in the mail drop for
mailing the United States Courthouse, Foley
Square, Borough of Manhattan, City of New York.

Elmer J. Sayer

Sworn to before me this

27th day of March '74

Lynwood Hayes

LYNWOOD HAYES
Notary Public, State of New York
No. 41-1720825
Qualified in Queens County
Cert. filed in New York County
Commission Expires March 30, 1975

